EXPLANANATORY MEMORANDUM TO

THE SCHOOL GOVERNANCE (ROLES, PROCEDURES AND ALLOWANCES) (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 2688

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 ("the 2013 Regulations") which came into force on 1st September 2013. The purpose is to:

- insert a requirement, omitted from the 2013 Regulations in error, that papers must, subject to specific exceptions, be circulated in advance of meetings both of governing bodies and of committees of governing bodies of maintained schools;
- clarify that the power the governing body has to approve alternative arrangements for governors to participate or vote in meetings of the governing body, extends to meetings of committees of the governing body.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 This instrument amends regulations 13 and 26 of the 2013 Regulations to re-instate provisions which were not included in those regulations in error.

4.2 It also inserts a new paragraph 10 to regulation 26 of the 2013 Regulations to provide that governing bodies may approve alternative arrangements for members of committees of governing bodies to participate or vote at meetings of the committee.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The 2013 Regulations make provision for the core functions and procedures of governing bodies of maintained schools in England and for the payment of out-of-pocket expenses incurred by school governors in the performance of their duties. They also apply, with modifications, to the management committees of Pupil Referral Units (PRUs) and governing bodies of schools that have federated under section 24 of the Education Act 2002. The 2013 Regulations revoked the School Governance (Procedures) (England) Regulations 2003 ("the 2003 Regulations").

7.2 These regulations will introduce the requirement that was in the 2003 Regulations, that any reports or other papers to be considered at meetings of the governing body (regulation 13(4)), or meetings of committees of the governing body (regulation 26(2)) must be circulated at least seven clear days in advance of such meetings. This requirement is subject to exceptions (at regulation 13(5) and 26(2)) allowing for this notice period to be shortened where the chair determines that there are matters demanding urgent attention.

7.3 A targeted consultation exercise was conducted with the Department of Education's Advisory Group on Governance (AGOG) prior to the drafting of the 2013 Regulations. Consultees wanted to retain the requirement to circulate any reports or other papers for consideration at meetings of governing bodies and of committees of governing bodies seven clear days in advance of the meeting being held. It had been proposed for the 2013 Regulations to remove this requirement. The Department agreed to include the requirement in the 2013 Regulations, but unfortunately due to an error this provision was not included in the 2013 Regulations.

7.4 The Department was made aware of this error by members of AGOG and it was agreed that the requirement would be reintroduced through amending regulations.

7.5 Under regulation 14(8) of the 2013 Regulations the governing body has the power to approve alternative arrangements for governors to participate or vote in meetings of the governing body including, but not limited to, by telephone or video conference. This regulation was introduced to give governing bodies more flexibility in how they conduct their meetings. People attending by video conference or by telephone will be considered to be present for the purposes of the requirement in regulations 14(3) and 26(5) that decisions of the governing body and its committees must be made by a vote of the governors present and voting on the issue in question. The new provision does not give governing bodies the power to authorise proxy voting or votes to be cast in advance of meetings.

7.6 Since the 2013 Regulations were laid, correspondence with stakeholders has highlighted the need to give the governing body the power to approve similar alternative arrangements for the meetings of committees under regulation 26. These regulations introduce an explicit power to this effect.

7.7 The new provisions will also apply to the governing bodies of federations of maintained schools and to the management committees of PRUs, with the modifications set out in Schedules 2 and 3 of the 2013 Regulations.

8. Consultation and Impact Assessment

8.1 The requirement to issue any reports or other papers to be considered at meetings of committees of the governing body at least seven clear days in advance of such meetings (as was contained in the 2003 Regulations) was requested to remain by those consulted on the 2013 Regulations. This consultation outcome was reported on in the Explanatory Memorandum to the 2013 Regulations. Also, as explained in paragraphs 7.3 and 7.4 above, the power for governing bodies to approve alternative arrangements for governors to participate or vote in committee meetings of the governing body is an extension of a current power, for which stakeholders have requested clarity on. The amendments we are making with the introduction of these amending regulations respond to stakeholder reaction to the 2013 Regulations, to correct the error on the 7 days' notice and to clarify the situation for committees. This stakeholder reaction was channelled through members of AGOG, in particular via AGOG members that are representative organisation of large numbers of governors and clerks. As these amendments respond to consultative feedback, we feel it unnecessary to conduct further consultation

9. Guidance

9.1 Departmental Advice on the 2013 Regulations will be issued on the Department's website by the end of October 2013, taking into account the amendments explained in this memorandum.

10. Impact Assessment

10.1 For the reasons outlined above in paragraph 8.1 we believe that there is no need to carry out an impact assessment on these regulations.

11. Regulating Small Business

11.1 This legislation does not apply to small business.

12. Monitoring and review

11.1 Monitoring of the 2013 Regulations as amended will be carried out through the regular meetings held between the Department and the relevant representative bodies: the National Governors' Association; the National Co-ordinators of Governor Services; and through the termly discussions with AGOG.

13. Contact

13.1 Steve Jones at the Department for Education tel: 01325 735628 or email: steve.jones@education.gsi.gov.uk can answer any queries regarding this instrument.